

**Town of Milford  
Zoning Board of Adjustment Minutes  
February 2, 2012  
Case #2012-02  
Joe Bellantoni**

Present: Fletch Seagroves  
Laura Horning  
Steve Bonczar  
Zach Tripp – Alternate

Absent: Kevin Johnson  
Steve Winder  
Michael Unsworth – Alternate

Secretary: Peg Ouellette

Case # 2012-02 – The applicant, Joe Bellantoni, owner of Map 30, Lot 14, 11 Vine St., Residence “A” District, is requesting an equitable waiver of dimensional requirements from Article V, Section 5.02.5:A, for a porch constructed six (6) +/- feet from the Farley Street right-of-way property line where thirty (30) ft is required, in accordance with Article X, Section 10.07.

*(New Section 10.07 under Article X has been posted for the March 2012 warrant, amended from Article II, Section 2.060.)*

Minutes of the February 2, 2012 meeting were approved and signed on April 19, 2012.

Fletcher Seagroves, Vice Chairman, acting as Chairman for the meeting, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board and introduced the Board. He stated that this evening there was no old business and one case under New Business. He read the notice of hearing into the record. The list of abutters was read. Abutters present were: Kim and Joe Bellantoni, the applicants, of 11 Vine Street. No abutters were present.

F. Seagroves informed the applicant that, since there are only four Board members present, he has the option to proceed with the hearing before four members or to request a postponement. If he proceeds with the four-member Board, it is necessary to obtain three affirmative votes in order to be approved and to sign a waiver stating that he waives the right to a five-member Board and understands that three affirmative votes are required to approve his request. The applicant decided to proceed with the four-member Board and signed the waiver.

Applicant was asked to explain the reason for requesting an equitable waiver.

Applicant stated the porch on his residence was in major disrepair and in the course of repairing it decided to extend it a little. Essentially it is a new porch. They encroached. He was told in the Community Development Office that it is a non-conforming lot and they made it more non-conforming by extending the porch closer to the street. He felt the old porch was a safety issue. Animals were getting into the house through holes in the top of the porch through the roof. It was a home project, but he probably should have consulted the town before proceeding.

F. Seagroves asked if this was a replacement porch?

Applicant said that was correct.

F. Seagroves asked how much bigger the replacement is than the old porch.

Applicant said the length is the same and the width is three feet to six or eight feet – it is three feet larger towards the street.

Z. Tripp stated his understanding of the size of the porch, and asked if there is a roof on it?

Applicant said that was correct.

Z. Tripp asked, prior to construction was the porch roof flush with the building and it had a flat roof on it.?

Applicant said yes.

Z. Tripp asked if it was correct that when the replacement work was started, he did not have a permit?

Applicant said yes.

Z. Tripp said they originally started to replace the ..

Applicant said they were trying to repair it.

Z. Tripp said they were repairing it. That answered his questions.

Mrs. Bellantoni said that this is also the emergency exit from her daughter's window. The roof was leaking and if her daughter ever had to get out in an emergency, she would have fallen through it.

S. Bonczar said he understands. He said they decided it needed to be repaired and started the repairs and got into it and in order to repair it you have to replace this and that, and then thought while they were ripping all that decking off why not extend it three feet – actually less, 34 inches – why not add that on. And at that point thinking "I'm just repairing it and embellishing it a little bit; I don't need a building permit for that." And come to find out the fact that it is only 34 inches wider puts you into a situation where you make it more non-conforming. And now, it costs money to take that off and scale it back, the whole roof back and everything else. And, therefore he was here for the equitable waiver.

Applicant said that was correct.

Z. Tripp asked applicant if he realized it is a non-conforming lot.

Applicant said he never heard of a non-conforming lot before this process.

L. Horning commented she hopes that residents who are listening are learning from this and they should check local ordinances before deconstructing or reconstructing, taking things down or putting things in -- fences, etc.

S. Bonczar said if you don't think you need a building permit, always check with the town just to make sure you don't. And even then, if you got a permit, in this case if he had a permit and thought he could extend it, and thought it was no big deal...

L. Horning said it is a big risk to start a project before coming before the Board and expect that because it is cost prohibitive to remove it, they might not make them take it down. You can't rely on just one element of the zoning ordinance, but have to take the whole zoning ordinance into consideration, which is difficult.

Z. Tripp wanted a clarification as to the current setback allowed on the north side of the lot would be 15 feet and from the Farley Street side is 30 feet. So there is a 45-foot setback on a 41-foot lot.

S. Bonczar said that is why it's non-conforming.

Z. Tripp said he is just stating that for the record.

F. Seagroves said it is a corner lot so he has 30 feet on Vine Street and 31 on the other street.

Applicant said it was quite an eye-opener when he got the map from the town and it said the street was supposed to be this wide and you make that line on your lawn.

F. Seagroves said if there were no other questions, he would open it up for public discussion.

S. Bonczar asked the applicant at what time did he submit a building permit application that says it was denied?

Applicant said after the notice.

S. Bonczar asked if it was after the building inspector had come out?

Applicant said that was correct.

L. Horning asked if the project was completed?

Applicant said the project is currently not completed. It is in the middle. There is no siding. There is a deck and a roof

L. Horning said that she's trying to determine where in the process was the applicant when he filed the application that was denied. In the middle of construction, or where he is now?

Applicant said they stopped construction when notice was received that it was a violation.

Z. Tripp asked if the town noticed he was doing the construction and notified him he needed a permit?

Applicant said town notified him that he needed to contact them. He dealt with a woman first and then got a second notice and went to see Shirley in the Town office who steered him the right direction.

F. Seagroves said if there were no further questions he would open the meeting for public discussion. There were no other questions from the Board.

F. Seagroves opened the meeting for public discussion. There were no questions from the public.

F. Seagroves closed the public portion of the meeting and asked the applicant to read his application into the record.

Applicant read his application:

**Section 1. Application for Equitable Waiver of Dimensional Requirements**

An Equitable Waiver of Dimensional Requirements is requested from article X section 10.07.0 of the zoning ordinance to permit construction of a covered porch 6'5" from the Farley Street right of way property line where 30' is required (existing home is legal non-conforming).

**1. Does the request involve a dimensional requirement, not a use restriction?**

Yes

**2. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot had been transferred to a bona fide purchaser.**

I believe a building official drove past our property and noticed the construction of the covered porch.

**And how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake**

I can in no way claim ignorance of the law and feel my actions were not in bad faith. I simply got caught up in a project, which originally began as possibly repairing the existing porch. As the project moved from repair to new, I should have consulted the Building Department before proceeding.

**3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.**

The existing covered porch had openings that permitted rodents to enter the interior of the house. It was also leaking and rotting which presented safety hazards to people who entered the house from the back door. The new structure is not only safe for people using the entrance but it is also a more aesthetically pleasing structure thus enhancing the value of the neighborhood.

**4. Explain how the cost of correction far outweighs any public benefit to be gained.**

The cost of correction would only place a financial burden on me and my family. I do not see any public benefit in removing the porch.

F. Seagroves asked if there were any further questions. There being none, he closed the portion of the meeting.

Z. Tripp asked about the expansion of a non-conforming use. If this was non-conforming before, does it mean the entire house is non-conforming?

S. Bonczar said no, this was just dealing with this. It is already non-conforming so there is other there. He referred to Paragraph 2.0.0 , *"Uses of land and building in existence at the time of passage of this Ordinance may be continued although such use does not conform to the provisions of this Ordinance"* and all those sections re the non-conforming use.

Z. Tripp said they were dealing with the setback and the whole house setback.

S. Bonczar said the equitable waiver is because of the addition. If the applicant had just built the porch the way it was, replaced or repaired it the way it was, there would be no need for equitable waiver. The house and porch would still be non-conforming but the fact that 34 inches were added to the width- because it's there, then they were in an equitable waiver. If applicant had gotten a building permit he would have gone through trying to get a special exception.

F. Seagroves said he would have gone to Section C, Alteration.

L. Horning said on a non-conforming use. In which you were making a non-conforming use more non-conforming which is why it was denied.

The Board then went through requirements for an equitable waiver.

S. Bonczar said so if it's already there, they are on an equitable waiver.

S. Bonczar said re the violation was not discovered by the owner, the explanation given that it started as a repair project and then they decided to enhance it a little here and there, the owner would not have known unless he had come for a permit. This is a perfect example why people should double-check if they are not sure. With regard to the second one, ignorance of the law or Ordinance, obfuscation ,or misrepresentation of bad faith but caused by either a good faith error or error in interpretation – he didn't think there was any bad faith by the applicant knowing what the ordinance is and knowing he was non-conforming and within the setback and built this anyway. He didn't think this was done in bad faith. Regarding "physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property" S. Bonczar said he drove past the property and it didn't look like it

didn't belong. All the houses in the area are probably non-conforming. All the houses are close to the road and sidewalk He didn't see an extra 34 inches being a public or private nuisance. He stated that regarding the "cost of correction would outweigh the public benefit to be gained" the Board has had cases where it was pretty clear, where a builder miscalculated a wetland incorrectly where he thought the wetland or he didn't know he had to be within so many feet of a buffer, etc, until the whole house was up that's an easy one to say the cost would outweigh public benefit. In his opinion, in this case, even though it is not complete, it is substantially complete, and he didn't think the public would gain anything by it not being completed.

L. Horning said yes, the violation was not noted until after a structure in violation was substantially completed or until after a lot or other division of land had been subdivided, she would say the violation was not noted until after construction was substantially completed. The applicant was given notice to the point where he is now and it sounded as though it was substantially completed with a roof in place He was given notice to the point he is at now. It sounded like it was substantially complete. There is roof and major portion of construction was complete; it was a matter of putting side on and finishing touches. That the violation was not an outcome of ignorance of the law, failure to inquire, or obfuscation, misrepresentation or bad faith but was caused by good faith error or ordinance interpretation or applicability made by a municipal office, she would say the applicant answered this question in his statements and as S. Bonczar just answered. So her answer is yes, outcome was not due to ignorance of the law or any of the other factors in this question. Re the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property, this is a densely populated area and some of these buildings are already constructed in a way in this area that they are also in the same non-conforming use. They all have porches and decks and other materials and in pretty close proximity to the applicant's. Because she said yes to question 2, she will build on that in question 3,. It is in standing with other properties in the area that already have their encroaching non-conforming use issues. Re "due to the degree of past construction .... the cost of correction so far outweighs any public benefit " she didn't see the public gaining anything from making them take the porch apart and go back 34 inches. They are not in the street, sidewalk or public way in such a way that it would constitute that. She stated she believes forcing them to take it apart would be cost prohibitive for them and didn't see any public gain.

Z. Tripp #1, Applicant testified that the town notified them of this once it was close to being finished. He drove by and the shingles are on the column, the framing and deck are in. (#2) He didn't believe it was bad faith; he felt it was a good faith error in starting off as a repair project, not realizing the entire house is in the setback. It is reasonable that expanding it 34 inches he didn't intentionally go into the setback and be in violation. Regarding #3, as testified, it is a high density area . There are a couple of houses down on the corner close to the street than this deck is He doesn't feel it is any more a public or private nuisance than other houses in that neighborhood. He doesn't see any public gain to require the cost to rebuild it 34 inches closer to the house.

F. Seagroves said on #1, that the violation was not noticed until after the structure was in violation. Obviously the applicant did not know until someone from the town told him. #2, that the violation is not the outcome of ignorance of the law or failure to inquire or bad faith, he said when a project like that is started, sometimes depending on what material you have and everything else it seems to go better if it's a little bit different. He didn't see where it was a nuisance. Will it devalue the property in the area? If anything, he felt it was raise the value. He also drive by it and it looks nice and will look better once the siding is on. He didn't see any public gain by the Board refusing him, although they could cut two feet off of it. But he didn't see how the town could benefit from that.

F. Seagroves then asked for a vote on the four findings:

**1. Was the violation not noticed or discovered until after the structure was substantially completed?**

L. Horning – yes.

Z. Tripp – yes

S. Bonczar – yes.

F. Seagroves – yes

**2. Was the violation not the outcome of ignorance of the law but caused by good faith error or has existed for ten years or more?**

S. Bonczar – yes

L. Horning – yes

Z. Tripp – yes

F. Seagroves – yes

**3. Does the dimensional violation not constitute a public or private nuisance, diminish the value of other property or interfere with use of the property?**

S. Bonczar – yes

L. Horning – yes

Z. Tripp – yes

F. Seagroves – yes

**4. Does the correction cost outweigh the public benefit to be gained?**

Z. Tripp – yes

S. Bonczar –yes

L. Horning – yes

F. Seagroves – yes

S. Bonczar made a motion to approve Case 2012-02 for an equitable waiver.

L. Horning seconded.

All voted in favor. Motion passed 4 to 0.

F. Seagroves informed the applicant he has been approved and reminded them of the thirty-day waiting period and cautioned them they should go back to the building inspector who can tell them when they can start again. He also said that for the public watching, this case is a good example of why they should go to the town hall. The Zoning Regulations are on-line, but they should go and talk to people in the town hall to ask what they can or cannot do and the people in town hall will help out.

Applicant commented that people at town hall have been terrific.

**Other Business**

F. Seagroves said he would prefer to take up the reading of the amendments to the Zoning Board of Adjustment Rules of Procedure when a full Board is present. All other Board members agreed.

**Minutes:**

F. Seagroves said there were no minutes to approve.

F. Seagroves asked for a motion to adjourn.

S. Bonczar made a motion to adjourn the meeting.

L. Horning seconded.

All in favor.

Meeting adjourned at 7:35 p.m.